

16th May, 1946.

PRESENT: —

HIS EXCELLENCY THE GOVERNOR (SIR MARK AITCHISON YOUNG, G.C.M.G.)

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS (MAJOR-GENERAL F. W. FESTING, C.B.E., D.S.O.)

The ATTORNEY GENERAL (Hon. Mr. G. E. STRICKLAND, Acting).

The SECRETARY FOR CHINESE AFFAIRS (Hon. Mr. R. R. TODD, Acting).

The FINANCIAL SECRETARY (Hon. Mr. C. G. S. FOLLOWS, C.M.G., Acting).

Hon. Mr. C. H. SANSOM, C.M.G., C.B.E., (Acting Commissioner of Police).

Hon. Mr. T. M. HAZLERIGG, O.B.E., M.C.

Hon. Mr. T. MEGARRY (Chairman, Urban Council).

Hon. Dr. J. P. FEHILY, O.B.E., (Acting Director of Medical Services).

Hon. Mr. CHAU TSUN-NIN, C.B.E.

Hon. Mr. LO MAN-KAM, C.B.E.,

Hon. Mr. LEO D'ALMADA E CASTRO.

Hon. Mr. R. D. GILLESPIE.

Hon. Mr. D. F. LANDALE.

Hon. Dr. CHAU SIK-NIN.

Mr. C. B. BURGESS (Acting Clerk of Councils).

ARSENT: —

The COLONIAL SECRETARY (Hon. Mr. D. M. MACDOUGALL, C.M.G., Acting).

MINUTES.

The Minutes of the previous meeting of the Council were confirmed.

NEW MEMBERS.

The Hon. Mr. T. MEGARRY (Chairman, Urban Council), and the Hon. Dr. J. P. FRUILY, O.B.E., (Acting Director of Medical Services), took the Oath of Allegiance and assumed their seats as Members of the Council.

WELCOME TO ILE. THE GOVERNOR.

Hon. Mr. LO MAN-KAM. —Your Excellency, on the afternoon of Monday the 8th December, 1941, you presided over a meeting of the Executive and Legislative Councils. As one of the two members—the other being my Honourable friend Mr Leo d'Almada e Castro—present both at that meeting and at this, the first ordinary meeting of this Council to-day, I should like, if I may, on behalf of all the unofficial members, to tender a warm welcome to you, Sir, as President of this Council.

At that meeting you, Sir, formally announced to both Councils "that a state of war now exists between the British Empire and Japan." And so the war came to this tiny Colony. Eventually you, Sir, became a prisoner of war of an enemy whose treatment of prisoners of war and of the inhabitants of the territories he occupied, constitutes an everlasting dark blot in the annals of history. The suffering, which you, Sir, had to endure affords some indication to you of the agony and nightmare which the people of this Colony, internees and residents, had to undergo during the Japanese occupation. Thanks to the undefeatable spirit of Britain and the heroism of all the great Allies, the Japanese Empire, together with Germany and Italy, were finally and utterly crushed, and the menacing spectre of militarism removed from the earth. But, alas ! not until August, 1945, and not without irreparable loss and suffering. We in the Colony mourn those who gave their all for the Cause, including so many sons of Hongkong.

Much has been done towards the rehabilitation of the Colony. But, Sir, Hongkong is still licking its wounds. The hostilities and the occupation will leave many permanent scars in the shape of injuries, mental as well as physical, and it must take time to repair all the material damage and ravages of the past four years.

Moreover, it is a truism that the problems of peace are no less difficult than those of war. And the Colony is faced with many of its own problems of peace—social, political and economic.

All the unofficial members are convinced that with your personal knowledge of the Colony's suffering, and under your wise guidance and direction, all such problems will be solved in the best interests of the Colony, so that those who gave up their lives in its defence will not have died in vain, and that those who remain may look forward to the future with confidence.

Your return, Sir, we hope and believe, marks a new epoch in the history of the Colony. In a sense, it signifies the resumption of the Civil Administration, including the sittings of this Council, interrupted in December, 1941. But it means more than this. It marks a point in time at which, pausing to survey the last century of progress, aided by the experience, but untrammelled by the mistakes, of the past, the Colony resolutely turns to post-war reconstruction and social betterment. It signifies the birth of a new Hongkong, which, in surviving the grim ordeal of the war years, has learned to appreciate the inestimable boon of law and order, the sense of responsibility in a greater measure of self-government foreshadowed by Your Excellency, and the need to strive and attain an ever higher standard of life and living through unity of purpose and effort.

Imbued with this spirit, thankfully rejoicing in deliverance from an intolerable yoke, resolved to advance the interests of the Colony as a whole and not those of any particular section or community, we cordially welcome Your Excellency's resumption of the Presidency of this Council and assure you, Sir, of our wholehearted co-operation and support.

H.E. THE GOVERNOR. —I am very grateful to the Honourable Member and all the Unofficial Members of this Council for the welcome that has been extended to me and also for the confidence that has been expressed in the Civil Administration. On behalf of that Administration, I assure members that it will be our endeavour—and I use the plural because I speak not only for myself but for the whole of the public services—it will be our earnest endeavour so to deal with the manifold problems which await solution; that the coming of victory and peace which have been looked forward to so long, and so ardently, may be remembered hereafter in Hong Kong, not only as the ending of a Period of common suffering, but as the beginning of a period of real advances to a common goal.

Hongkong has many needs to-day and among the chief of these I place not only greater prosperity, but better fellowship, and it is on the expression of goodwill as well as the promise of help and support that I have received since my return to Hongkong that I found my hopes of witnessing a marked and memorable development of both of these two things—prosperity and good fellowship—during the remainder of my term of office in this Colony.

ADDRESS.

H.E. THE GOVERNOR. —Honourable Members of the Legislative Council, I wish to take this opportunity of addressing the Council very briefly on three subjects of the first importance, which will undoubtedly take a prominent place among the matters with which the Council will be concerning itself in the coming months.

These subjects are: —

- (1) The financial position and prospects of the Colony,
- (2) The supply position, and
- (3) The housing problem.

I wish it were possible for me to present to you not only a clear picture of our present financial position but also a reasoned and probable estimate of our prospects for the coming year. But there are at the present time so many unknown factors that it is impossible to speak either of the present or of the future, save in very general terms.

One of the major uncertainties in regard to our present financial position is the question of the incidence of cost of the period of Military Administration which has just come to an end. Both the actual cost of various services during this period and, what is more important, the extent, if any, to which the Colonial Government will be required to contribute towards the total cost of the period are as yet undetermined.

There are many other uncertain factors which make it quite impossible to give actual figures showing what is our precise financial position at the present time. I can only inform Honourable Members, and this will not be in any way surprising news to them, that such balances as stood to the credit of the Colony at the end of 1941 have been very much more than swallowed up by the expenditure of the whole subsequent period.

We start therefore on May 1, 1946, not only with no balance standing to our credit but with a very heavy adverse balance, the precise amount of which cannot be stated but particulars of which will be laid before you as early as possible.

As we turn to our financial prospects for the future, and in particular when we consider the interrelation between the revenue and the expenditure of the financial year 1946-1947, it is again necessary to make it clear that we are faced with a large and inevitable deficit.

It is certain that for the period of eleven months of which this financial year will consist, and in all probability for not less than another year thereafter, the total expenditure will greatly exceed the Revenue. Not only will abnormal expenditure have to be met in respect of repairs to buildings and the complete re-equipment of every Government department but during a portion of the present financial year there will be abnormal expenditure on Personal Emoluments.

Large numbers of our permanent officials are still recuperating from the effects of their internment and it has been necessary to retain temporarily a number of Military Officers and Other Ranks who were serving under the Military Administration. These will be released as replacements arrive but in the meantime it is necessary for the Government to refund to the War Office the amount due in respect of their pay and allowances together with a pension contribution. Another source of additional expenditure lies in the necessity to retain for the time being certain departments such as the Department of Supplies, Trade and Industry, and the Quartering Commandant's Department, which do not normally form part of the Colonial Government organization.

Then the Police Department is at the present time considerably over establishment in European Inspectors and Sub-Inspectors. The Colony had to be policed on its re-occupation. Practically no European Inspectors or Sub-Inspectors were available for duty and it was necessary to recruit men with some previous experience for such posts. It was not to be expected that experienced men could be appointed on a purely temporary basis. Every effort is now being made to reduce the establishment to normal dimensions, but this may be a long process. Our final aim is to reduce the European establishment to a lower figure than before the war, and to employ a greater number of Chinese in more responsible posts.

These are some of the factors which affect our prospects for 1946-1947 and the Government is now engaged in the task of drawing up for the consideration of the Legislature its estimates of revenue and expenditure for this eleven-month period. The estimate will, it is hoped, be ready for presentation in the latter part of June or at the beginning of July.

In these estimates recurrent expenditure will of course be shown separately from the special expenditure required for extraordinary purposes including the cost of reconstruction and rehabilitation. Proposals will I hope be ready for submission to you shortly for the financing of a large part of this special expenditure by means of a Loan.

Even so, the annual ordinary expenditure for which we must provide cannot possibly be covered by the revenue which we can reasonably expect to collect. There would still be a very substantial

deficit even if all extraordinary expenditure were to be met from Loan funds. It will therefore, be impossible to present a balanced budget. I am reluctant to commit myself to any definite figures at this stage, but in order to give Honourable Members some idea of the magnitude of the deficit I may mention that the total expenditure other than expenditure on rehabilitation is expected to be in the neighbourhood of 75 million dollars and that against this our revenue for the eleven months will probably be under 40 million dollars.

The supply position in the Colony is not unsatisfactory for the moment, but with the continued world shortage of foodstuffs it is obvious that we shall be called on, during the next few months, to make even greater sacrifices than heretofore. Our most acute shortage is Rice, which has entailed a reduction in the daily issue to 7 oz per person. It is regrettable that alternative supplies such as flour and pulses are equally scarce. Our difficulties are due in part to the fact that the Ministry of Food expected us to draw our share of many of the commodities necessary to sustain life from contiguous territories. In practice, however, a variety of difficulties has greatly reduced the flow of meat from Kwangchowwan, of fats and oils from China and Java, and of soya beans and other pulses from North China. This has meant that new sources of supply have had to be arranged and that for a while the flow of supplies has been very uncertain.

In recent weeks, however, we have been receiving moderate consignments of meat, sugar, beans, with which it has been possible to supplement the diet of the people, and to offset to some extent the shortage of rice. Supplies of meat have been unexpectedly good and we have accumulated reasonable quantities of canned goods of all kinds, which will help us considerably to redress other shortages and make for a better balanced diet. It is expected that these canned goods can be released almost immediately.

As regards our future prospects, the world shortage of cereals, fats and oils must inevitably continue into next year, and it is absolutely imperative that we should all take every possible precaution against waste and unnecessary consumption.

Supplies of coal will probably remain restricted for some more months to come, and firewood also will be difficult, chiefly because of the destruction wrought by the Japanese in Borneo, which is our main source of supply.

There has been a marked improvement recently in the textile situation. We have been informed that, as a result of our approaches to India and the Indian Trade Delegation, which visited Hongkong some time ago, an allocation has been granted, and it is now probable that within a month or two new supplies of Indian textiles will arrive in the Colony. It is doubtful whether these will

be completely adequate for the whole population, but steps will be taken to ensure as even a distribution as possible, and all stocks will be price controlled.

Speaking generally I am glad to say that the restoration of normal commercial trade is growing apace. Goods of all kinds are beginning to flow into the Colony and there is pleasing evidence in the growing list of articles, for the import of which applications have been received, of the initiative, energy, and enterprise of the local trading population, who after 5 years of enforced inaction are now sending their orders to the ends of the world for goods for sale in Hong Kong and transhipment to the mainland.

The third matter on which I wish to address a few words to you to-day is the housing problem.

I was very glad to find on my arrival that a strong Committee had been examining the various and difficult questions which arise in connection with the reconstruction and rehabilitation of the numerous buildings which have suffered destruction and damage, and that in accordance with its widely drawn terms of reference it had presented a report of great value. I take this opportunity of expressing the thanks of the Government to the Chairman and Members of that committee. Its report is to be laid before you immediately.

I regard as a key recommendation of the committee the proposal for the immediate appointment of a senior officer with appropriate powers who will be charged with the sole duty of co-ordinating and directing the work of reconstruction and housing. The Government has accepted this recommendation, and I am confident that real and rapid progress will be made as a direct consequence of its acceptance.

It will not be expected that I should give at this stage any detailed account of the manner in which the Government proposes to follow up other recommendations made by the committee. They are being studied and will be followed up as a matter of the utmost importance and the utmost urgency. Co-ordination of imports, whether by Government or by commercial interests, will be organised in order to ensure the ordering of supplies of necessary materials. I have already had under consideration the question of the renewal of Crown Leases which are due to expire in the near future. The committee has rightly asked that a speedy decision 'may be reached on this important matter and I hope that a public announcement will be made in the very near future.

It must be recognized that difficulties and delays in dealing with the general housing situation have been caused by a number of factors which are by no means under the control of Government. The problem is one which affects the whole community and which can

only be satisfactorily solved by the co-operation of the whole community. We have before us now the valuable aids to action contained in the committee's report, and any further suggestion of a practical nature, which may be made will be welcomed by the Government.

I can assure the Council that both it and the general public will be kept fully informed by the Government of the progress which we are able to make in this important matter, of the difficulties which we encounter, and, I hope, of our success in overcoming those difficulties.

QUESTIONS

Hon. Mr. LO MAN-KAM asked. —

- (a) Will Government make an announcement regarding the housing problem and how it is proposed to be dealt with?
- (b) Will Government table the report of the Building Reconstruction Advisory Committee appointed by His Excellency Vice-Admiral Sir Cecil Harcourt?

The FINANCIAL SECRETARY replied. —

- (a) The housing problem, to which reference has been made in the President's Address, will certainly form the subject of further announcements by the Government as the details of its policy are worked out, and as action is taken in accordance with that policy.
- (b) The report has been laid on the table.

The FINANCIAL SECRETARY.---By Your Excellency's command, I lay upon the table certain papers, copies of which are in the hands of Honourable Members.

The Papers laid were as follows: —

1. Final Report of the Building Reconstruction Advisory Committee, 1946, together with
2. Report of the Housing Commission, 1935.

SUPREME COURT (EMERGENCY) BILL, 1946.

The ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to make provision for the Chief Justice to authorise solicitors to appear in any jurisdiction of the Supreme Court." He said: The Objects and Reasons for the measure are set out at the foot of the Bill, and Honourable Members will have a further opportunity of perusing them together with the Bill before

the second reading is moved, since, if Council agrees to the Bill being read the first time to-day, it is proposed to move the second reading to-morrow afternoon.

In the circumstances, I content myself with stating briefly that the object for the measure is to enable the Chief Justice in any particular case to authorise any duly enrolled solicitor of the Supreme Court or any Crown Solicitor or Assistant Crown Solicitors to appear before the Supreme Court not only in the jurisdictions in which they are now entitled to appear but also in any other jurisdiction.

The reasons for the Bill as regards applications by duly enrolled solicitors are; (a) shortage of practicing barristers in the Colony and (b) insofar as concerns criminal jurisdiction, the shortage of staff in the Legal Department.

As regards appearances by the Crown Solicitor or Assistant Crown Solicitors the reason for seeking authority for them to appear in jurisdictions other than criminal jurisdiction of the Supreme Court is the shortage of officers in the Attorney-General's Department. The Bill would enable them to represent Government or Government Departments as advocates in civil matters. An example of the type of matters affected would be proceedings by or against the Custodian of Property and Enemy Property.

It is emphasised that the Bill is an emergency measure and it is not in any way intended to prejudge any question of fusing the two professions which has been done in some Colonies and that this question if it becomes a pressing one can only be considered when a return to normal conditions makes it possible to gauge the number of barristers available to practice in the Colony.

The FINANCIAL SECRETARY seconded, and the Bill was read a first time.

Objects and Reasons

The "Objects and Reasons" for the Bill were stated as follows: —

1. The President of the Standing Military Court is resuming practice at the Bar and he would naturally be reluctant to appear in cases of which he has taken cognizance as President of the Standing Military Court. There are at present only two other barristers available in the Colony of whom one is averse to practising in criminal proceedings.

2. It is known that other barristers will at a later date be available but this may not be for some time and exact numbers are unknown. Under the law of the Colony solicitors (other than the Crown Solicitor and Assistant Crown Solicitors) are not permitted

to appear before the Supreme Court except in its Summary Jurisdiction which relates only to civil matters. There is therefore not only a danger of congestion and delay in the handling of civil matters (but the possibility that persons charged with a criminal offence may be unable to secure legal representation in Court for their defence. This is highly undesirable.

3. One solution would be to provide for the fusion of the professions of barrister and solicitor respectively and make them all authorised advocates as has been done in some other colonies. This however is a step that should not be considered until the situation is more normal and time has shown how fully the bar will be represented in the Colony.

4. Another solution is to modify the law so as to enable the Chief Justice to authorise any duly enrolled solicitor of the Supreme Court to appear in any proceedings before the Court. This expedient was resorted to by Ordinance No. 7 of 1922 which is reproduced in the Schedule to these Objects and Reasons. It is believed that that Ordinance was passed to deal with the emergency created in a particular civil cause by the briefing of all available barristers for one party to such cause. This explains why Ordinance No. 7 of 1922 made no reference to criminal proceedings. The present measure is more urgently required for criminal than civil proceedings and while modelled on the 1922 precedent extends to all proceedings before the Supreme Court whether civil or criminal.

5. The depleted staff of the Attorney General's department makes it desirable that the Crown Solicitor and Assistant Crown Solicitors should also appear as advocates on behalf of the Crown in civil proceedings in the Original Jurisdiction of the Supreme Court. As this is not authorised by the Crown Solicitors Ordinance 1912, appropriate provision has been made by their inclusion in sub-section (1) (a) of clause 2 of the measure.

6. Shortage of staff led to the employment by the British Military Administration of Mr Marcus da Silva to prepare and prosecute cases of persons collaborating with the Japanese before the Standing Military Court. Many of these cases are now pending before a magistrate and will ultimately be tried by the Supreme Court. It is desirable, that such cases should be prosecuted by Mr. Silva at all events until the Attorney General's department is fully staffed. As Mr. Silva is not employed full time and has his own practice to attend to, he could not be appointed Assistant Crown Solicitor without infringing the provisions of sub-section (3) of section a of that Ordinance. It is accordingly proposed to employ him as Counsel for the prosecutions undertaken. In order to achieve this Clause 2 (1) (b) of the measure provides that it shall be

lawful for the Chief Justice in the exercise of his discretion at the request of the Attorney General to authorise any duly enrolled solicitor of the Supreme Court to appear and act as an advocate on behalf of the Crown in any proceedings before a Magistrate or at the Criminal Sessions and also to appear before the, Full Court on any appeal or question reserved arising out of any such proceedings.

POWERS OF MAGISTRATES (EMERGENCY) BILL, 1946.

The ATTORNEY GENERAL moved the first reading of a Bill intituled “An Ordinance temporarily to vest increased powers in Police Magistrates.” He said:

The observations which I made with regard to the opportunity to peruse the previous Bill and its objects and reasons apply also to this Bill and to the other Bills mentioned in the agenda.

Briefly the object of the Bill is to avoid so far as possible delay and congestion in the trial of criminal cases. By vesting increased powers in a Police Magistrate it is hoped to cut down the number of cases that will otherwise have to go to the Supreme Court. Ancillary objects are to enable the judges of the Supreme Court to devote part of their time to civil matters and to decrease the demands for Jury service.

The increased powers which are based on regulations made in December 1941, in exercise of Emergency powers, enable a magistrate to impose sentences aggregating to three years in lieu of 12 months. They also enable a magistrate to deal with a wider group of indictable offences and to impose for any such offence two years imprisonment and fine of \$2,000, in lieu of six months or \$250 fine as previously made.

It should be observed that wider powers had in fact been vested in more or less the same personnel that now compose the Magistracy during the Military Administration and that the powers will only be exercisable by a Magistrate whom the Chief Justice certifies possesses the necessary qualifications and experience.

The Bill is an emergency one and it is left to the Chief Justice to recommend to the Governor-in-Council when he considers that it should cease to have effect.

The FINANCIAL SECRETARY seconded, and the Bill was read a first time.

Objects and Reasons

The “Objects and Reasons” for the Bill were stated as follows: —

1. The object of the measure is to vest in Magistrates increased powers of punishment.

2. During the period of Military Administration a Summary Military Court Class I, which consisted of one member of the Standing Military Court sitting alone, had power to impose imprisonment not exceeding five years and fine not exceeding five thousand dollars. This enabled such Courts to deal summarily with a great number of cases which in normal times would have to be committed to the Supreme Court. This not only avoided the necessity of convening a General Military Court but saved time before the Summary Military Court.

3. Despite the facts mentioned in paragraph 2 of these objects and reasons the Military Courts were only just able to keep abreast of the work and only one out of thirty persons accused of collaborating with the enemy had been tried by May 1st though all had been brought before the Court and committal proceedings had been completed in two other cases. Practically all of such cases will have to be brought before the Supreme Court and be tried with a jury. Moreover, the Commissioner of Police considers that the volume of crime will not be less than that prevailing during the Military Administration. Indeed as the Force comes up to strength the volume of discovered crime should increase.

4. Despite the commencement three months ago of a Jury List there are only 1232 names on such list compared with 4400, the usual average before the Pacific War. Of these about 2000 would be called upon in the course of the year. It is not unlikely therefore that persons now in the Jury List might be called upon twice in the course of a year at a time when reconstruction and rehabilitation require all the time and energy that can be devoted to it.

5. It is Government's intention to staff the Magistrates with officers qualified as barristers or solicitors though a District Officer and Marine Magistrates will still exercise jurisdiction. It is also proposed to limit the exercise of the increased powers vested by the measure to professionally qualified persons leaving the District Officer and Marine Magistrates to their normal jurisdiction. Clause 3 of the measure provides the machinery for achieving this by making gazetted notification by the Chief Justice a condition precedent to the exercise of the power.

6. The increased powers sanctioned by the Ordinance were sanctioned previously by Regulations made by the Governor in exercise of Emergency Powers. These Regulations lapsed on the 31st March, 1946.

7. The extent of the increased powers which can be observed by perusing the comparative table in the Schedule to these objects and reasons can briefly be summarised as follows: —

- (1) The aggregate of terms of imprisonment (including imprisonment in default of payment of a fine) is now three years instead of twelve months---Section 51 as amended.
- (2) In the case of an indictable offence a magistrate can now impose two years imprisonment and a fine not exceeding two thousand dollars instead of six months or to a fine not exceeding two hundred and fifty dollars.
- (3) In the case of stealing and of two special offences under the Offences against the Person Ordinance, 1865, one magistrate sitting alone may now impose two years imprisonment instead of one year and two magistrates sitting together may now impose three years imprisonment instead of two as previously.
- (4) Magistrates are empowered by this Ordinance to try the offences specified under the numbers 7, 8, 11, 12, 13, 14, 15 and 16 of the Third Schedule to the Magistrates Ordinance (reproduced in the Schedule to the Bill) of which the most important are arson, perjury and corruption.

8. The main object of the measure is to relieve the pressure on the Supreme Court which is at present only staffed by the Acting Chief Justice and avoid serious delay and congestion in criminal cases.

9. Ancillary objects are to enable some of the Civil work of the Courts to be despatched and to lessen demands on jurors.

10. An alternative would be the appointment of additional temporary judges. This will probably be necessary in any event when the Moratorium is lifted. There are at present two difficulties: absence of the Chief Justice and the fact that there is at present no suitable person willing to act who is not otherwise employed.

11. The measure is necessarily an emergency one and provision is made by clause 4 of the Ordinance for the Ordinance to cease to have effect as from such day as the Governor-in-Council may on the recommendation of the Chief Justice specify. As there are bound to be some part-heard cases in course of trial on such day, provision is made for the continued exercise of the powers in such cases, notwithstanding the expiry of the measure.

12. The measure is also safeguarded by the provisions of clause 3 and by the facilities for appeal from and review of the decision of a magistrate.

**URBAN COUNCIL (TRANSITIONAL PROVISIONS)
BILL, 1946.**

The ATTORNEY GENERAL moved the first reading of a Bill intituled "An Ordinance to provide for the Urban Council to function temporarily without elected members." He said:

The objects of the Bill may briefly be stated to be the constitution of a valid Urban Council notwithstanding the fact that it is not possible to proceed to an election now of the two members for whose election provision is made by the present Ordinance.

It is obviously necessary that the Urban Council should commence to function in the ordinary way as soon as possible and equally clearly undesirable to proceed to election in the present state of the register of electors.

Provision is made for the synchronisation of the retiring date of all members whether appointed or elected. This date will be a year from the commencement of the Ordinance. His Excellency proposes to proceed to appointments as soon as the Bill becomes law and the Ordinance will come into operation on the same date as that for which the appointments take effect.

Substitution of one year for the normal period of three years of office is a natural one having regard to the announcement already made by H.E. about more representative institutions in the Government with particular reference to a Municipal Council.

The FINANCIAL SECRETARY seconded, and the Bill was read a first time.

Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

1. The Urban Council Ordinance, 1935, under which a Council is constituted which exercises certain powers to local Government, provides for the appointment of some members and the election of others.

2. The members who had been elected before the occupation have concluded their term of office and without elected members the Council cannot function legally.

3. Under sub-section (2) of Section 3 of the present Ordinance the electorate is composed of the persons whose names appear in one or other of the two parts of the register thereafter mentioned. Under sub-section (3) of Section 3 the first part of the register consists of the two Jurors lists for the current jury year brought

into force under the Jury Ordinance, 1887, as amended by the Jury Ordinance, 1929. Under sub-section 4 of the same section the second part of the register consists of (with certain modifications) such of the persons exempted from jury service who have duly applied for registration on the register.

4. It will be some time before either part of such register will be sufficiently complete to warrant holding an election. So far only four persons have registered under part two and Jurors lists will have to be approved when there are enough names on the list compiled by the Registrar under Order No. 8 made under Article I of Proclamation No. 4 as amended by the Law Amendment (Transitional Provisions) Ordinance, 1946, to warrant the lists being submitted to the Governor-in-Council.

5. Clause 4 of the Bill accordingly provides that

"(1) Notwithstanding any vacancies occurring in the Council by reason of the failure from any cause whatsoever to hold elections of or to elect both or either of the additional members of the Council referred to in sub-section (2) of Section 3 of the Principal Ordinance the Council shall be deemed to be legally constituted without either of such members until any vacancy arising because of any such failure has been lawfully filled.

(2) The preceding sub-section shall cease to have effect after one year from the date of the coming into operation of this Ordinance." Paragraph 2 of the Clause fixes a time-limit beyond which the above provision will not operate.

6. In view of the possible replacement of the Urban Council by a Municipal Council it is considered that Urban Councillors should not be appointed for more than a year. Clause 3 accordingly substitutes "one year" for "three years" as the term of office.

7. As the elections will be held subsequent to the appointment of the rest of the members who hold office, the result would be that, if the elected members served their full term of office, their retirement would occur on a different date from other members. Provisions has, accordingly, been made for the retirement of the elected members and of any members appointed in default of nomination at the expiration of one year from the coming into force of the Ordinance. It is proposed that the Ordinance shall come into force on the date when notification of the appointments of the other members is given in the Gazette, which will have the effect of the term of office of all councillors ceasing on the same day. See clauses 5 and 7 of the measure.

8. The Jury Ordinance has been amended subsequently to the amendment referred to in sub-section (3) of Section 3 of the Ordinance. Clause 6 of the Bill makes the necessary formal amendment.

CHINESE COLLABORATORS (SURRENDER) BILL, 1946.

The ATTORNEY GENERAL moved the first reading of a Bill intituled “An Ordinance to provide for the surrender of subjects of China, who, during the war period, have, in China, collaborated with the Japanese.” He said:

The object of the Bill is to continue to make arrangement to provide for the surrender of persons of Chinese nationality other than British subjects who, during the period July 7, 1937, and August 16, 1945, collaborated in China with the Japanese.

It is required to give effect to arrangements made between the United Nations for the surrender to each of such nations by any such other nation of nationals who collaborated with the Japanese.

The Bill continues the policy adopted in this respect by the British Military Administration, but for the reasons stated in the objects and reasons, a special machinery for surrender is provided instead of relying on the Deportation of Aliens Ordinance used during the British Military Administration.

The main reasons are these:

1. The Deportation of Aliens Ordinance provides for deportation, not for surrender.
2. A Police enquiry to check the allegations of collaboration is considered more suitable rather than an enquiry by the Secretary for Chinese Affairs as provided for in the Deportation of Aliens Ordinance.

The Objects and Reasons also explain why the Extradition Ordinance is considered unsuitable. The main reason is that the machinery therein provided would be impracticable in the circumstances. The Government is aware that it is asking the Legislative Council to sanction action to be taken by the Executive Council in matters affecting personal liberty. It is, however, considered that this is the only practicable solution.

The FINANCIAL SECRETARY seconded, and the Ordinance was read a first time.

Objects and Reasons.

The “Objects and Reasons” for the Bill were stated as follows:

1. The measure is necessary in order to continue to give effect to an arrangement between the United Nations whereby disloyal

subjects of any of such nations are to be surrendered by another of such nation within the jurisdiction on which they are to be found.

2. During the period of Military Administration requests, by way of implementation of such arrangement, were made to the Commander-in-Chief Admiral Harcourt by Chinese Military Authorities, particularly those in Canton, for the surrender of Chinese nationals who had come to the Colony and who were accused of collaboration with the Japanese.

3. Three of such collaborators were arrested and subsequently deported under the Deportation of Aliens Ordinance, 1935. Two other arrests were made but as the evidence available here appeared insufficient they were subsequently released.

4. To continue to use the Deportation of Aliens Ordinance would not be entirely satisfactory. In the first place the Ordinance provides for deportation, not surrender. In the second Place the Ordinance was not directed against the class of persons for which it is now desired to provide and though its terms are probably wide enough to cover the deportation of Chinese nationals appearing to be collaborators, it is doubtful wisdom to make general use of an Ordinance for a purpose for which it was not intended. Moreover, the procedure under section 4 is hardly appropriate.

5. The course of amending the Extradition Ordinance, which would have met the first difficulty indicated in the preceding Paragraph, was also considered. Apart from the difficulty that the Extradition Ordinance does not apply to offences of a political character there are practical reasons why the Chinese Extradition Ordinance is unsuitable. First, our Courts are already overburdened as other measures now before Council show only too clearly. In the second place, to require China to produce here the numerous witnesses that would be required would not only put her to considerable expense and trouble but would probably prove impracticable. Similar objections exist to the employment of the procedure introduced by the proviso to section 9 of the Chinese Extradition Ordinance particularly when time is of the essence and failure to hand over collaborators with reasonable expedition might well prejudice the continuance of our good relations with the Republic of China.

6. It was accordingly decided to introduce new legislation providing for the making of an order for Surrender by the Governor in Council and incorporating such of the provisions of both the Ordinances mentioned as would render surrender reasonably expeditious and practicable.

7. In considering the measure it should not be overlooked---
- (a) that the interpretation of “Collaborator” and “Chinese National” excludes the application of the measure to British subjects; and
 - (b) that the measure is limited to acts committed during “the war period” in “China” both of which terms are interpreted.

There is no question of surrendering a person for acts committed here.

8. In the interpretation of “war period” in Clause 2 of the measure the first date is the date of the Marco Polo Bridge incident which may be regarded as the opening of hostilities between China and Japan. The latter date is the date by which Japan's acceptance of the Potsdam terms became generally known.

9. Clause 3 of the measure empowers the Governor in Council to order the surrender of any Chinese national who, during the war period, has, in the opinion of the Governor in Council, done in any part of China any act or thing designed or calculated to benefit the enemy or hostile or detrimental to or designed or calculated to defeat, hinder or prejudice the cause of the United Nations or the prosecution of any war in which any of such Nations were engaged.

10. Other clauses of the Bill are either machinery for arrest pending investigation or ancillary measures for giving effect to the order for surrender, facilitating proof of the order and other discretionary powers and for the protection of the officers acting under the Ordinance. The following summary gives a short description of such machinery and ancillary measures together with the source from which they are derived or on which they are based. The abbreviations D.O.A. and C.E. represent respectively the Deportation of Aliens Ordinance, 1935, and the Chinese Extradition Ordinance, 1889.

Summary

Bill	Explanation	Source
C1. 4 (1)	Issue of warrant by Governor for 14 days detention of suspected collaborator.	D.O.A. Sec. 4 (1)
(2)	Custody of such person by any officer referred to in warrant and transfer of custody.	D.O.A. Sec. 4 (2)

Bill	Explanation	Source
	(3) Issue by Governor of warrant for 7 days further detention.	D.O.A. Sec. 5 (2)
	(4) Provision if no express direction as to custody in any warrant. This is an alternative to subsection (2).	New
Cl.5	(1) Service of collaborator of order for surrender.	D.O.A. Sec. 9 (1)
	(2) Collaborator deemed under lawful arrest until surrender.	D.O.A. Sec. 9(2) last part.
	(3) Surrender by order of the Colonial Secretary to delegate of Chinese Authority. Endorsement of this order on order for surrender to be sufficient authority to police officers and others to use restraint necessary to effect removal from Colony.	Partly new. D.O.A. Sec. 11(3) and (2)
Cl.6	No steps other than those expressly specified necessary for validity of warrant or order.	D.O.A. Sec.6
Cl.7	(1) Release by order of Colonial Secretary.	D.O.A. Sec. 4(10)
	(2) Release no bar to subsequent proceedings or to deportation or extradition.	D.O.A. Sec. 7
Cl.8	Protection of officers against proceedings for acts done under Ordinance.	C.E. Sec. 16
Cl.9	Forms in Schedule to be used and to be valid and sufficient.	C.E. Sec.17
Cl.10	(1) Order of surrender and certified copy to be conclusive evidence of due making and validity of order.	D.O.A. Sec. 16 (.1)
	(2) Certificate by Colonial Secretary to be conclusive evidence of other matters preliminary to or ancillary to order.	C.E. Sec. 19
	(3) Provision as to proof of order or certified copy.	D.O.A. Sec. 16 (2)

Bill	Explanation	Source
C1.11	Decision of Governor in Council to make order for surrender to be final and conclusive.	D.O.A. Sec. 17
C1.12	(1) Arrest of collaborator returning without permit within six months.	c.f. D.O.A. Sec. 13 which makes it an offence to return.
	(2) Power for Governor to order fresh surrender or detention pending investigation.	New (to replace penalty).
	(3) Power to order further detention.	D.O.A. Sec. 5 (2)
	(4) Arrest to be reported to Colonial Secretary within 18 hours.	New (to avoid undue delay).
C1.13	Saving of Deportation of Aliens Ordinance and of Chinese Extradition.	
C1.14	Provides for expiration on 30/4/47 but saves any pending proceedings.	Sec. 12(e) of the Interpretation Ordinance, 1911.

ADJOURNMENT.

H. E. THE GOVERNOR. — Council will now adjourn until Friday, May 17th, at 2.30 p.m.
